

United States Section Directive

Volume: I
Chapter: 730
Date: June 25, 2002

Change Order: 01

SUBJECT : PROCEDURES FOR FACILITATING THE PROVISION OF REASONABLE ACCOMMODATIONS

TO: : All Supervisors and Managers, USIBWC
Presidents, AFGE Locals 3060 and 3309

CONTROL : Equal Opportunity Office (915) 832-4112

A. Purpose - This change order effects Handbook H-730, "Procedures for Providing Reasonable Accommodations". It's purpose is to provide clarifications as to (1) who can accept a request for accommodation, when an immediate supervisor is not available; (2) time limits for responding to a request for accommodation when an immediate supervisor is not available; (3) medical information or documentation which may be requested by the decision maker.

Recipients of this change order (CO) are requested to do the following: 1) place the CO in front of their office copy of the subject Handbook; 2) line through only those provisions of the Handbook that have been changed as described below; and 3) reference each deleted provision with "Refer to CO 01".

B. Changes - The following provisions replace those in the subject handbook:

Table of Contents -

Change the "Reasonable Accommodation Information Reporting Form" number from 390 to:

(IBWC Form 393)

Section II, Request for Reasonable Accommodation

Paragraphs 3 and 4. replace with the following paragraphs:

An employee may request a reasonable accommodation from his/her supervisor, or manager in his/her immediate chain of command or the EEO office, orally or in writing by completing and submitting USIBWC Form 392. If the request is received by someone other than the immediate supervisor, the recipient of the request must initiate the processing of the request and forward the request to the requestor's supervisor immediately upon his availability. The 15 day time frame for rendering a decision begins from the date of the request. If the requestor's supervisor will not be available in the 15 day time frame, the next in line supervisor will be the decision maker. The recipient of the request must forward the request together with any supporting documentation to the decision maker. If the request is oral it must be followed up by completing IBWC form 392, "Confirmation of Request".

An applicant may request a reasonable accommodation orally or in writing from any Human Resources (HR) employee with whom the applicant has contact in connection with the application process or from the EEO office. The HR employee or EEO employee shall provide USIBWC form 392 to the applicant, this form will be forwarded to the HR supervisor. The HR supervisor will be the decision maker for applicants and will ensure that the applicant is accommodated throughout the application and interview process. If the applicant is the selected applicant, the HR supervisor will notify the supervisor of the accommodation requirements. The Human Resources Office is responsible for training staff that are involved in the application process to recognize requests for reasonable accommodation and to handle them appropriately.

Section II, Request for Reasonable Accommodation

Seventh Paragraph, add to last sentence:

or manager in his/her immediate chain of command, or the EEO office.

Section III, Does The Individual Requesting the Accommodation Have a Disability? Request for Medical Information

Second Paragraph, add to last sentence :

The agency may request information or documentation regarding:

- ! the nature, severity, and duration of the individual's impairment;
- ! the activity or activities that the impairment limits;
- ! the extent to which the impairment limits the individual's ability to perform the activity or activities; and/or
- ! why the individual requires reasonable accommodation or the particular reasonable accommodation requested, as well as how the reasonable accommodation will assist the individual to apply for a job, perform the essential functions of the job, or enjoy a benefit of the workplace.

Third Paragraph, add to end of first sentence:

but will not ask for unrelated documentation and may not request access to a person's complete medical records because they are likely to contain information unrelated to the disability at issue and the need for accommodation.

Section VI. Time Frames for Processing Requests and Providing Reasonable Accommodations.

Add to first paragraph:

The time frame for processing an accommodation request is not extended where a supervisor is not available and an accommodation request is received by a manager in his/her immediate chain of command, or the EEO office. The person who receives the request must within one business day forwarded it to the decision-makers and/or commence the processing of the request.

B. Effective Date

The provisions of this Change Order become effective upon the date of issuance.

FOR THE COMMISSIONER

Cecilia Rubio
EEO Specialist

United States Section Directive

Volume I
Chapter 730
Date September 10, 2001

SUBJECT: PROCEDURES FOR FACILITATING THE PROVISION OF REASONABLE ACCOMMODATIONS

TO : Executive Management Staff, Division Engineers, Heads of Offices, Project Managers, EEO Officer, and Presidents, AFGE Locals 3060 & 3309

CONTROL : EEO Officer (915) 832-4111

730.01 PURPOSE

To provide employees and/or job applicants with disabilities the procedures by which they may initiate a request for reasonable accommodations.

730.02 REQUIREMENT/AUTHORITY

Executive Order 13164 (65 Federal Register 46565) "Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation" requires each agency to adopt procedures for processing requests for reasonable accommodations.

Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.) As amended.

The United States Section of the International Boundary and Water Commission, (USIBWC), hereby establishes its Procedures to Facilitate the Provision of Reasonable Accommodation.

730.03 SCOPE:

This plan will be given agency wide distribution to all supervisors and managers with provisions for making it available to all employees, and as appropriate, applicants.

720.4 EFFECTIVE DATE: This directive is effective immediately upon issuance.

FOR THE COMMISSIONER

Cecilia Rubio
EEO Officer

PROCEDURES FOR PROVIDING REASONABLE ACCOMMODATION
FOR INDIVIDUALS WITH DISABILITIES

TABLE OF CONTENTS

I. The USIBWC Policy on Reasonable Accommodation/Definition of Key Terms 01

II. Requests for Reasonable Accommodation 02

III. Does the Individual Requesting the Accommodation Have a Disability? 03 a
 Requests for Medical Information

IV. The Interactive Process 04

V. Confidentiality Requirements Regarding Medical Information Obtained in the Reasonable
Accommodation Process 05

VI. Time Frames for Processing Requests and Providing Reasonable Accommodation 06

VII. Granting a Reasonable Accommodation Request 08

VIII. Denial of Reasonable Accommodation Request 08

IX. Informal Dispute Resolution 09

X. Information Tracking and Reporting 10

XI. Relation of Procedures to Statutory and Collective Bargaining Claims 11

Appendix 11

FORMS:

- (1) Request for Reasonable Accommodation (IBWC Form 392)
- (2) Reasonable Accommodation Information Reporting Form (IBWC Form 393)
- (3) Denial of Reasonable Accommodation Request (IBWC Form 394)

I. POLICY ON REASONABLE ACCOMMODATION

The USIBWC's policy is to fully comply with the reasonable accommodation requirements of the Rehabilitation Act of 1973. Under the law, federal agencies must provide reasonable accommodation to qualified employees or applicants with disabilities, unless doing so would cause undue hardship. The USIBWC is committed to providing reasonable accommodations to its employees and applicants for employment in order to assure that individuals with disabilities enjoy full access to equal employment opportunity at the USIBWC.

The USIBWC provides reasonable accommodations:

when an applicant with a disability needs an accommodation in order to be considered for a job;

when an employee with a disability needs an accommodation to enable him or her to perform the essential functions of the job or to gain access to the workplace; and

when an employee with a disability needs an accommodation to enjoy equal benefits and privileges of employment.

The USIBWC will process requests for reasonable accommodation and, where appropriate, provide reasonable accommodations in a prompt, fair and efficient manner.

DEFINITION OF KEY TERMS

Reasonable Accommodation: Any change in the work environment or in the way things are customarily done that would enable a qualified individual with a disability to enjoy equal employment opportunities.

Qualified Individual with a Disability: An individual with a disability is qualified if (1) s/he satisfies the requisite skill, experience, education, and other job-related requirements of the position and (2) s/he can perform the essential functions of the position, with or without reasonable accommodation.

Essential Functions: Those job duties that are fundamental to the position that the individual holds or desires that s/he cannot do the job without performing them. A function can be considered "essential" if, the position exists specifically to perform that function; there are a limited number of other employees who could perform the function; or the function is specialized and the individual is hired based on his/her ability to perform it. Determination of the essential functions of a position must be done on a case-by-case basis so that it reflects the job as actually performed, and not simply the components of a generic position description.

Reassignment: Reassignment is a form of reasonable accommodation that, absent undue hardship, is provided to employees (not applicants) who, because of a disability, can no longer perform the essential functions of their job, with or without reasonable accommodation.

Reassignments are made only to vacant positions at or below the employee's current grade level or equivalent. Employees must be qualified for the new position. If the employee is qualified for the position, s/he will be reassigned to the job and will not have to compete for it.

Undue Hardship: If a specific type of reasonable accommodation causes significant difficulty or expense, the USIBWC does not have to provide that particular accommodation. Determination of undue hardship is made on a case-by-case basis, considering factors that include the nature, cost and the impact of the reasonable accommodation on the operations of the agency.

II. REQUESTS FOR REASONABLE ACCOMMODATION

A request for reasonable accommodation is a statement that an individual needs an adjustment/change at work, in the application process, or in a benefit or privilege of employment for reason(s) related to a medical condition. The reasonable accommodation process begins as soon as the request for accommodation is made. If medical documentation is required to confirm the need and the type of accommodation, the process begins as soon as the documentation is received .

An individual with a disability may request a reasonable accommodation whenever s/he chooses, even if s/he has not previously disclosed the existence of a disability. Any USIBWC employee or applicant may consult the EEO officer for further information or assistance in connection with requesting or processing a request for reasonable accommodation.

An employee may request a reasonable accommodation from his/her supervisor, **or manager in his/her immediate chain of command or the EEO office, orally or in writing by completing and submitting USIBWC Form 392. If the request is received by someone other than the immediate supervisor, the recipient of the request must initiate the processing of the request and forward the request to the requestor's supervisor immediately upon his availability. The 15 day time frame for rendering a decision begins from the date of the request. If the requestor's supervisor will not be available in the 15 day time frame, the next in line supervisor will be the decision maker. The recipient of the request must forward the request together with any supporting documentation to the decision maker.** If the request is oral it must be followed up by completing IBWC form 392, "Confirmation of Request".

An applicant may request a reasonable accommodation orally or in writing from any Human Resources (HR) employee with whom the applicant has contact in connection with the application process **or from the EEO office.** The HR employee or **EEO employee** shall provide USIBWC form 392 to the applicant, this form will be forwarded to the HR supervisor. **The HR supervisor will be the decision maker for applicants and will ensure that the applicant is accommodated throughout the application and interview process. If the applicant is the selected applicant, the HR supervisor will notify the supervisor of the accommodation requirements.** The Human Resources Office is responsible for training staff that are involved in the application process to recognize requests for reasonable accommodation and to handle them appropriately.

A family member, health professional, or other representative may request an accommodation on behalf of a USIBWC employee or applicant. The request should go to the same person to whom the employee or applicant would make the request.

The EEO officer and the Safety and Occupational Health manager will be available, as needed, to provide assistance to employees and decision makers in processing requests.

All decision makers must have designated back-ups to continue receiving, processing, and providing reasonable accommodations when the decision maker is unavailable. Decision makers should ensure that individuals know who has been designated as back-up. The time frames discussed in Section VI, below, will not be suspended or extended because of the unavailability of a decision maker. The back-up for a supervisor is his/her supervisor **or manager in his/her immediate chain of command, or the EEO office.**

III. DOES THE INDIVIDUAL REQUESTING THE ACCOMMODATION HAVE A DISABILITY? REQUESTS FOR MEDICAL INFORMATION

The USIBWC is entitled to know that an employee or applicant has a covered disability that requires a reasonable accommodation. In some cases the disability and need for accommodation will be obvious or otherwise already known to the decision maker. In these cases, the USIBWC will not seek any further medical information. However, when a disability and/or need for reasonable accommodation is not obvious or otherwise already known to the decision maker, the USIBWC may require, if it chooses, that the individual provide reasonable documentation about the disability and his or her functional limitations.

If a supervisor or other decision maker believes that medical information is necessary in order to evaluate a request for reasonable accommodation, s/he will make a request to the employee to provide/obtain the medical information. **The agency may request information or documentation regarding:**

- ! *the nature, severity, and duration of the individual's impairment;***
- ! *the activity or activities that the impairment limits;***
- ! *the extent to which the impairment limits the individual's ability to perform the activity or activities; and/or***
- ! *why the individual requires reasonable accommodation or the particular reasonable accommodation requested, as well as how the reasonable accommodation will assist the individual to apply for a job, perform the essential functions of the job, or enjoy a benefit of the workplace.***

If a determination is made to seek medical information, the USIBWC will request information sufficient to substantiate that the individual has a Rehabilitation Act disability and

needs the reasonable accommodation requested, **but will not ask for unrelated documentation and may not request access to a person's complete medical records because they are likely to contain information unrelated to the disability at issue and the need for accommodation.** The USIBWC will seek information or documentation about the disability and/or functional limitations from the individual, and/or ask the individual to obtain such information from an appropriate professional, such as a doctor, social worker, or rehabilitation counselor. In order to get the most helpful information, all requests for information should describe the nature of the job, the essential functions the individual is expected to perform, and any other relevant information.

If the information provided by the health professional (or the information volunteered by the individual requesting the accommodation) is insufficient to enable the USIBWC to determine whether an accommodation is appropriate, the decision maker may ask for further information.

If further information is required, the decision maker must first explain to the individual seeking the accommodation, in specific terms, why the information which has been provided is insufficient, what additional information is needed, and why it is necessary for a determination of the reasonable accommodation request. The individual may then ask the health care or other appropriate professional to provide the missing information. (See Section X for instructions on storage of this information.)

The USIBWC has the right to have medical information reviewed by a medical expert of the agency's choosing at the agency's expense only if the individual has provided insufficient documentation from his/her own health care or other appropriate professional to substantiate the existence of a disability and the need for reasonable accommodation. If, in response to an agency's initial request, an individual submits insufficient documentation to demonstrate that s/he has a disability and needs accommodation, the agency should explain to that person why the submitted documentation is insufficient; identify the information that is needed; and allow the individual an opportunity to provide the information before requesting a medical examination. In such circumstances, the agency may ask the individual to sign a limited release and then either submit a list of specific questions to the individual's health care professional or simply have its own physician contact the individual's doctor.

If the individual requesting an accommodation is still unable to provide sufficient information in support of the request, the agency may request that the individual be examined by a health care professional of the agency's choice at the agency's expense. Any such medical examination must be limited to determining the existence of a disability and/or the functional limitation that require a reasonable accommodation. Where a medical examination is warranted, the agency must explain to the individual with a disability that failure to agree to it could result in a denial of reasonable accommodation.

Failure to provide appropriate documentation or to cooperate in the USIBWC's efforts to obtain such documentation can result in a denial of the reasonable accommodation.

IV. THE INTERACTIVE PROCESS

The next step is for the parties to begin the interactive process to determine what, if any, accommodation should be provided. The individual requesting the accommodation and the USIBWC decision maker must talk to each other about the request, the process for determining whether an accommodation will be provided, and potential accommodations.

Communication is a priority throughout the entire process. The USIBWC decision maker will have the principal responsibility for identifying possible accommodations. S/he will take a proactive approach in searching out and considering possible accommodations, including consulting appropriate resources for assistance. The employee requesting the accommodation should also participate to the extent possible in helping to identify an effective accommodation. The EEO officer is also available to provide assistance.

As the first step, the USIBWC decision maker will: (1) explain to the applicant or employee that s/he will be making the decision on the request; and (2) describe what will happen in the processing of the request. This initial discussion should occur as soon as possible.

When a request for accommodation is made by a third party, the decision maker should, if possible, confirm with the applicant or employee with a disability that s/he, in fact, wants a reasonable accommodation before proceeding. It may not be possible to confirm the request if the employee has, for example, been hospitalized in an acute condition. In this situation, the USIBWC will process the third party's request and will consult directly with the individual needing the accommodation as soon as it is practicable.

On-going communication is particularly important where the specific limitation, problem, or barrier is unclear; where an effective accommodation is not obvious; or where the parties are considering different possible reasonable accommodations. In those cases where the disability, the need for accommodation, and the type of accommodation which should be provided are clear, extensive discussions are not necessary. Even so, the decision maker and requesting individual should talk to each other to make sure that there is a full exchange of relevant information.

The decision maker or any other the USIBWC official who receives information in connection with a request for reasonable accommodation may share information connected with the request with other agency officials only when the agency official(s) need to know the information in order to make determinations on a reasonable accommodation request. See Section V for specific rules governing the confidentiality of medical information.

For example, the Information Management Division (IMD) will typically be consulted in connection with requests for adaptive equipment for computers. However, IMD has no need to know any information about the medical condition of the person seeking the accommodation. It only needs to know his or her functional limitations as these limitations affect technology needs. There are specific considerations in the interactive process when responding to a request for reassignment.

Reassignment will only be considered if no accommodations are available to enable the individual to perform his or her current job, or if the only effective accommodation would cause undue hardship.

In considering whether there are positions available for reassignment, the supervisor will work with the Human Resources office (HR) and the individual requesting the accommodation to identify: (1) all vacant positions within the agency for which the employee may be qualified, with or without reasonable accommodation; and (2) all positions which HR has reason to believe will become vacant over the next 60 business days and for which the employee may be qualified. The agency will first focus on positions which are equivalent to the employee's current job in terms of pay, status, and other relevant factors. If there is no vacant equivalent position, the USIBWC will consider vacant lower level positions for which the individual is qualified.

Reassignment may be made to a vacant position outside of the employee's commuting area if the employee is willing to relocate. As with other transfers not required by management, the USIBWC will not pay for the employee's relocation costs.

V. CONFIDENTIALITY REQUIREMENTS REGARDING MEDICAL INFORMATION OBTAINED IN THE REASONABLE ACCOMMODATION PROCESS

Under the Rehabilitation Act, medical information obtained in connection with the reasonable accommodation process must be kept confidential. All medical information, including information about functional limitations and reasonable accommodation needs, the USIBWC obtains in connection with a request for reasonable accommodation must be kept in files separate from the individual's personnel file. Any USIBWC employee who obtains or receives such information is strictly bound by these confidentiality requirements.

The EEO officer will maintain custody of all records obtained or created during the processing of a request for reasonable accommodation, including medical records, and will respond to all requests for disclosure of the records. All records will be maintained in accordance with the Privacy Act and the requirements of 29 C.F.R. 1611. This information may be disclosed only as follows:

- supervisors, managers who need to know may be told about necessary restrictions on the work or duties of the employee and about the necessary accommodation(s), but medical information should only be disclosed if strictly necessary.
- first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment;

PROCEDURES FOR PROVIDING REASONABLE ACCOMMODATION FOR INDIVIDUALS WITH DISABILITIES

- government officials may be given information necessary to investigate the agency's compliance with the Rehabilitation Act; and
- the information may in certain circumstances be disclosed to workers' compensation offices or insurance carriers.

Whenever medical information is disclosed, the individual disclosing the information must inform the recipients of the information about the confidentiality requirements that attach to it.

VI. TIME FRAMES FOR PROCESSING REQUESTS AND PROVIDING REASONABLE ACCOMMODATIONS

The USIBWC will process requests for reasonable accommodation and provide accommodations, where appropriate, in as short a time frame as reasonably possible. However, the USIBWC recognizes, that the time necessary to process a request will depend on the nature of the accommodation requested and whether it is necessary to obtain supporting information. ***The time frame for processing an accommodation request is not extended where a supervisor is not available and an accommodation request is received by a manager in his/her immediate chain of command, or the EEO office. The person who receives the request must within one business day forward it to the decision-makers and/or commence the processing of the request.***

A. Expedited processing: In certain circumstances, a request for reasonable accommodation requires an expedited review and decision in a time frame that is shorter than the 15 or 20 business days discussed below. This includes where a reasonable accommodation is needed:

- *to enable an applicant to apply for a job.* Depending on the timetable for receiving applications, conducting interviews, taking tests, and making hiring decisions, there may be a need to expedite a request for reasonable accommodation in order to ensure that an applicant with a disability has an equal opportunity to apply for a job. Therefore, the Human Resources Office supervisor may need to move as quickly as possible to make a decision and, if appropriate, provide a reasonable accommodation.
- *to enable an employee to attend a meeting scheduled to occur shortly.* For example, an employee may need a sign language interpreter for a meeting scheduled to take place in 5 days.

B. If a request for an accommodation can be processed by the requesting employee's supervisor, no supporting medical information is required, and no extenuating circumstances apply, the request shall be processed and the accommodation, if granted, provided in no more than 15 business days from the date of the request, and sooner, if possible. Since decision makers may need the full 15 days to engage in the interactive process and collect all relevant information about possible accommodations, they should not delay beginning this process. Failure to meet this time frame solely because a decision maker delayed processing the request is not an extenuating circumstance. (See next page for information on "extenuating circumstances.")

- If the decision maker believes that it is necessary to obtain medical information to determine whether the requesting individual has a disability and/or to identify the functional limitations, the decision maker will make such request to the requester making the accommodation request as soon as possible after his or her receipt of the request for accommodation, but before the expiration of the 15-day period. The USIBWC recognizes that the need for documentation may not become apparent until after the interactive process has begun.

PROCEDURES FOR PROVIDING REASONABLE ACCOMMODATION FOR INDIVIDUALS WITH DISABILITIES

- If medical documentation is requested, the accommodation, if granted, will be provided within 15 business days from the date the decision maker receives the relevant medical documentation information.

Examples of accommodations which can easily be provided within this 15-day time frame include:

- An employee with diabetes who sits in an open area asks for four breaks a day to test his/her blood sugar levels so that she may do these tests in private.
- An employee who takes anti-depressants which make it hard for him/her to get up in time to get to the office at 9:00, requests that s/he be allowed to start work at 10:00 and still put in an 8 hour day.
- A supervisor distributes detailed agendas at the beginning of each staff meeting. An employee with a learning disability asks that the agenda be distributed ahead of time because the disability makes it difficult to read which leads to more time needed to prepare.

C. Extenuating Circumstances: These are factors that could not reasonably have been anticipated or avoided in advance of the request for accommodation. When extenuating circumstances are present, the time for processing a request for reasonable accommodation and providing the accommodation will be extended as reasonably necessary. It is the USIBWC's policy that extensions based on extenuating circumstances should be limited to circumstances where they are strictly necessary. All USIBWC staff are expected to act as quickly as possible in processing requests and providing accommodations. The following are examples of extenuating circumstances:

- There is an outstanding initial or follow-up request for medical information, or the decision maker is evaluating medical information which has been provided.
- The purchase of equipment may take longer than 15 or 20 business days because of requirements under the Federal Acquisition Regulation.
- Equipment must be back-ordered, or the vendor cannot promptly supply the needed goods or services and another vendor is not immediately available.
- The employee with a disability needs to try working with equipment on a trial basis to ensure that it is effective before the USIBWC buys it.
- New staff needs to be hired or contracted for, or an accommodation involves the removal of architectural barriers.

"Extenuating circumstances" covers limited situations in which unforeseen or unavoidable events prevent prompt processing and delivery of an accommodation. For example, the USIBWC may not delay processing or providing an accommodation because a particular staff member is unavailable. All decision makers must have a designated back-up.

Where extenuating circumstances are present, the decision maker must notify the individual of the reason for the delay, and the approximate date on which a decision, or provision of the reasonable accommodation, is expected. Any further developments or changes should also be communicated promptly to the individual.

- If there is a delay in providing an accommodation which has been approved, the decision maker must investigate whether temporary measures can be taken to assist the employee. This could include providing the requested accommodation on a temporary basis or providing a less effective form of accommodation. In addition, the decision maker may provide measures that are not reasonable accommodations within the meaning of the law (e.g., temporary removal of an essential function) if: (1) they do not interfere with the operations of the Agency; and (2) the employee is clearly informed that they are being provided only on a temporary, interim basis.
- For example, there may be a delay in receiving adaptive equipment for an employee with a vision disability. During the delay, the supervisor might arrange for other employees to act as readers. This temporary measure may not be as effective as the adaptive equipment, but it will allow the employee to perform as much of the job as possible until the equipment arrives.

If a delay is attributable to the need to obtain or evaluate medical documentation and the USIBWC has not yet determined that the individual is entitled to an accommodation, the USIBWC may also provide an accommodation on a temporary basis. In such a case, the decision maker will notify the individual in writing that the accommodation is being provided on a temporary basis pending a decision on the accommodation request.

USIBWC decision makers who approve such temporary measures are responsible for assuring that they do not take the place of a permanent accommodation and that all necessary steps to secure the permanent accommodation are being taken.

VII. GRANTING A REASONABLE ACCOMMODATION REQUEST

As soon as the decision maker determines that a reasonable accommodation will be provided, that decision should be immediately communicated to the individual. If the accommodation cannot be provided immediately, the decision maker must inform the individual of the projected time frame for providing the accommodation. This notice does not need to be in writing but the decision maker should keep a record of the date and time of the discussion.

VIII. DENIAL OF REASONABLE ACCOMMODATION REQUEST

As soon as the decision maker determines that a request for reasonable accommodation will be denied, s/he must fill out the attached "Denial of Request" form and give it to the individual who requested the accommodation. The explanation for the denial should be written in plain language, clearly stating the specific reasons for the denial. If the decision maker has denied a specific requested accommodation, and offered to make a different accommodation in its place which was not agreed to during the interactive process, the denial notice should explain the reasons for the denial of the requested accommodation and the reason the decision maker believes that the chosen accommodation will be effective. Reasons for the denial of a request for reasonable accommodation may include the following:

- The requested accommodation would not be effective.
- Providing the requested accommodation would result in undue hardship. Before reaching this determination, the decision maker must have explored whether other effective accommodations exist which would not impose undue hardship and therefore can be provided. A determination of undue hardship means that the Commission finds that a specific accommodation would result in significant difficulty or expense, or would fundamentally alter the nature of the USIBWC's operations.
- Medical documentation is inadequate to establish that the individual has a disability and/or needs a reasonable accommodation.
- The requested accommodation would require the removal of an essential function.
- The requested accommodation would require the lowering of a performance or production standard.

The written notice of denial also informs the individual that s/he has the right to file an EEO complaint and may have rights to pursue MSPB and union grievance procedures. The notice also explains EEO's procedures available for informal dispute resolution.

IX. INFORMAL DISPUTE RESOLUTION

- ! Individuals with disabilities can request prompt reconsideration of a denial of reasonable accommodation. If an individual wishes reconsideration, s/he should first ask the decision maker to reconsider the decision. The individual may present additional information in support of his/her request. The decision maker will respond to the request for reconsideration within 5 business days.
 - If the decision maker was the supervisor, and s/he does not reverse the decision, the individual can go up the Chain of Command and ask for reconsideration of the decision. A response to this request will be provided within ten business days.
 - If the decision maker is the Departmental manager, and s/he does not reverse the decision, the individual can ask the Commissioner to do so. The USIBWC Commissioner will respond to this request within 10 business days.

Pursuing any of the informal dispute resolution procedures identified above, including seeking reconsideration from the decision maker and appealing to the next person in the decision maker's chain of command, does not affect the time limits for initiating statutory and collective bargaining claims. An individual's participation in any or all of these informal dispute resolution processes does not satisfy the requirements for bringing a claim under EEO, MSPB, or union grievance procedures.

X. INFORMATION TRACKING AND REPORTING

The decision maker will complete the attached "Information Reporting" form (USIBWC Form 390) and submit it to the EEO officer within 10 business days of the decision. The decision maker should attach to the form copies of all information, including medical information, s/he received as part of processing the request.

The EEO officer will maintain these records for the longer of the employee's tenure with the USIBWC or 5 years.

XI. RELATION OF PROCEDURES TO STATUTORY AND COLLECTIVE BARGAINING CLAIMS

This policy is in addition to statutory and collective bargaining protections for persons with disabilities and the remedies they provide for the denial of requests for reasonable accommodation. Requirements governing the initiation of statutory and collective bargaining claims, including time frames for filing such claims, remain unchanged.

An individual who chooses to pursue statutory or collective bargaining remedies for denial of reasonable accommodation must:

For an EEO complaint: contact an EEO counselor in the of Equal Opportunity Office (EEO) within 45 calendar days from the date of receipt of the written notice of denial.

For a collective bargaining claim, file a written grievance in accordance with the provisions of the Collective Bargaining Agreement; or Initiate an appeal to the Merit Systems Protection Board within 30 calendar days of an appealable adverse action as defined in 5 C.F.R. 1201.3.

INQUIRIES

Any person wanting further information concerning these Procedures may contact the EEO office at 915-832-4112

DISTRIBUTION

These Procedures shall be distributed to all employees upon issuance and will be posted in the Directives Folder in Electronic Mail. Copies also will be available in the EEO office, and Human Resources Office. They shall be distributed to all new employees as part of their orientation on their first day of work.

APPENDIX

Selected Reasonable Accommodation Resources

U.S. Equal Employment Opportunity Commission

1-800-669-3362 (Voice) 1-800-800-3302 (TT)

The EEOC's Publication Center has many free documents on the Title I employment provisions of the ADA, including both the statute, 42 U.S.C. 12101 et seq. (1994), and the regulations, 29 C.F.R. 1630 (1997). In addition, the EEOC has published a great deal of basic information about reasonable accommodation and undue hardship. The two main sources of interpretive information are: (1) the Interpretive Guidance accompanying the Title I regulations (also known as the "Appendix" to the regulations), 29 C.F.R. pt. 1630 app. 1630.2(o), (p), 1630.9 (1997) , and (2) A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act III, 8 FEP Manual (BNA) 405:6981, 6998-7018 (1992). The Manual includes a 200-page Resource Directory, including federal and state agencies, and disability organizations that can provide assistance in identifying and locating reasonable accommodations.

The EEOC also has discussed issues involving reasonable accommodation in the following guidance and documents: (1) Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations at 5, 6-8, 20, 21-22, 8 FEP Manual (BNA) 405:7191, 7192-94, 7201 (1995); (2) Enforcement Guidance: Workers' Compensation and the ADA at 15-20, 8 FEP Manual (BNA) 405:7391, 7398-7401 (1996); (3) Enforcement Guidance: The Americans with Disabilities Act and Psychiatric Disabilities at 19-28, 8 FEP Manual (BNA) 405:7461, 7470-76 (1997); (4) Fact Sheet on the Family and Medical Leave Act, the Americans with Disabilities Act, and Title VII of the Civil Rights Act of 1964 at 6-9, 8 FEP Manual (BNA) 405:7371, 7374-76 (1996); and (5) Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act at 20, 22, 23, 24-5, 8 FEP Manual (BNA) 405:7701, 7711, 7712-14, 7715-16 (2000).

Finally, the EEOC has a poster that employers and labor unions may use to fulfill the ADA's posting requirement.

All of the above-listed documents, with the exception of the ADA Technical Assistance Manual and Resource Directory and the poster, are also available through the Internet at <http://www.eeoc.gov>.

Job Accommodation Network (JAN)

1-800-232-9675 (Voice/TT)

<http://janweb.icdi.wvu.edu/>.

A service of the President's Committee on Employment of People with Disabilities. JAN can provide information, free-of-charge, about many types of reasonable accommodations.

ADA Disability and Business Technical Assistance Centers (DBTACs)

1-800-949-4232 (Voice/TT)

The DBTACs consist of 10 federally funded regional centers that provide information, training, and technical assistance on the ADA. Each center works with local business, disability, governmental, rehabilitation, and other professional networks to provide current ADA information and assistance, and places special emphasis on meeting the needs of small businesses. The DBTACs can make referrals to local sources of expertise in reasonable accommodations.

Registry of Interpreters for the Deaf

(301) 608-0050 (Voice/TT)

The Registry offers information on locating and using interpreters and transliteration services.

El Paso Center of the Deaf (915) 544-6032

El Paso Lighthouse for the Blind (915) 532-4495

RESNA Technical Assistance Project

(703) 524-6686 (Voice) (703) 524-6639 (TT)

<http://www.resna.org/>

RESNA, the Rehabilitation Engineering and Assistive Technology Society of North America, can refer individuals to projects in all 50 states and the six territories offering technical assistance on technology-related services for individuals with disabilities. Services may include:

- information and referral centers to help determine what devices may assist a person with a disability (including access to large data bases containing information on thousands of commercially available assistive technology products),
- centers where individuals can try out devices and equipment,
- assistance in obtaining funding for and repairing devices, and
- equipment exchange and recycling programs.

REQUEST FOR REASONABLE ACCOMMODATION

Applicant's or Employee's Name _____

Today's Date _____

Date of Request _____

Applicant's or Employee's Telephone No.

Employee's Office

1. ACCOMMODATION REQUESTED. (Be as specific as possible, e.g., adaptive equipment, reader, interpreter)

2. REASON FOR REQUEST.

If accommodation is time sensitive, please explain:

Return Form EEO Manager
(Disability Program Manager will assign number)

3. Log No.: _____

REASONABLE ACCOMMODATION INFORMATION REPORTING FORM

Name of Individual requesting reasonable accommodation:

Office of Requesting Individual:

1. Reasonable accommodation: (check one)
 Approved
 Denied (If denied, attach copy of the written denial letter/memo - See Section XI, page 10, of the Reasonable Accommodation Procedures.)

2. Date reasonable accommodation requested:

Who received request: _____

3. Date reasonable accommodation request referred to decision maker (i.e., supervisor, Office Director, Disability Program Manager, Personnel Management Specialist):

Name of decision maker: _____

4. Date reasonable accommodation approved or denied: _____

5. Date reasonable accommodation provided (if different from date approved):

6. If time frames outlined in the Reasonable Accommodation Procedures were not met, please explain why.

7. Job held or desired by individual requesting reasonable accommodation (including occupational series, grade level, and office):

8. Reasonable accommodation needed for: (check one)

 Application Process

 Performing Job Functions or Accessing the Work Environment

 Accessing a Benefit or Privilege of Employment (e.g., attending a training program or social event)

REASONABLE ACCOMMODATION INFORMATION REPORTING FORM - continued

9. Type(s) of reasonable accommodation requested (e.g., adaptive equipment, staff assistant, removal of architectural barrier):

10. Type(s) of reasonable accommodation provided (if different from what was requested):

11. Was medical information required to process this request? If yes, explain why.

12. Sources of technical assistance, if any, consulted in trying to identify possible reasonable accommodations (e.g., Job Accommodation Network, disability organization, Disability Program Manager):

13. Comments:

Submitted by: _____ Phone: _____

Attach copies of all documents obtained or developed in processing this request.

DENIAL OF REASONABLE ACCOMMODATION REQUEST

(Must complete numbers 1-4; complete number 5, if applies)

1. Name of Individual requesting reasonable accommodation:

2. Type(s) of reasonable accommodation requested:

3. Request for reasonable accommodation denied because: (may check more than one box)
 - Accommodation Ineffective
 - Accommodation Would Cause Undue Hardship
 - Medical Documentation Inadequate
 - Accommodation Would Require Removal of an Essential Function
 - Accommodation Would Require Lowering of Performance or Production Standard
 - Other (Please identify) _____

4. Detailed Reason(s) for the denial of reasonable accommodation (Must be specific, e.g., why accommodation is ineffective or causes undue hardship):

5. If the individual proposed one type of reasonable accommodation which is being denied, but rejected an offer of a different type of reasonable accommodation, explain both the reasons for denial of the requested accommodation and why you believe the chosen accommodation would be effective.

6. If an individual wishes to request reconsideration of this decision, s/he may take the following steps:
 - a. First, ask the decision maker to reconsider his/her denial. Additional information may be presented to support this request.
 - b. If the decision maker does not reverse the denial: the requester can appeal to the chain of command.

DENIAL OF REASONABLE ACCOMMODATION REQUEST - CONTINUE

7. If an individual wishes to file an EEO complaint, or pursue MSPB and union grievance procedures, s/he must take the following steps:
 1. For an EEO complaint pursuant to 29 C.F.R. § 1614, contact an EEO counselor in the Office of Equal Opportunity within 45 calendar days from the date of this notice of denial of reasonable accommodation; or
 2. For a collective bargaining claim, file a written grievance in accordance with the provisions of the Collective Bargaining Agreement; or
 3. Initiate an appeal to the Merit Systems Protection Board within 30 calendar days of an appealable adverse action as defined in 5 C.F.R. § 1201.3.

Name of Deciding Official

Signature of Deciding Official

Date reasonable accommodation request denied _____